IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1972

NO. 72-694, COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY VS. NYQUIST

NO. 72-753, BRYDGES VS. COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY

NO. 72-791, NYQUIST VS. COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY

NO. 72-929, CHERRY VS. COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK CONVENED PURSUANT TO TITLE 28, SECTIONS 2281 AND 2283

MOTION AND BRIEF OF SIDNEY A. SEEGERS, STANLEY P. BABIN, F. CHARLES DELANA, ARTHUR F. LAMM, ALFRED J. O'BANION, MRS. MARY ELLIS ROCHE, THEODORE H. SHEPHARD, JR., MRS. VELMA D. SNOW, MRS. CATHERINE N. CORY AND MRS. MADELYN WILLIS AS AMICI CURIAE

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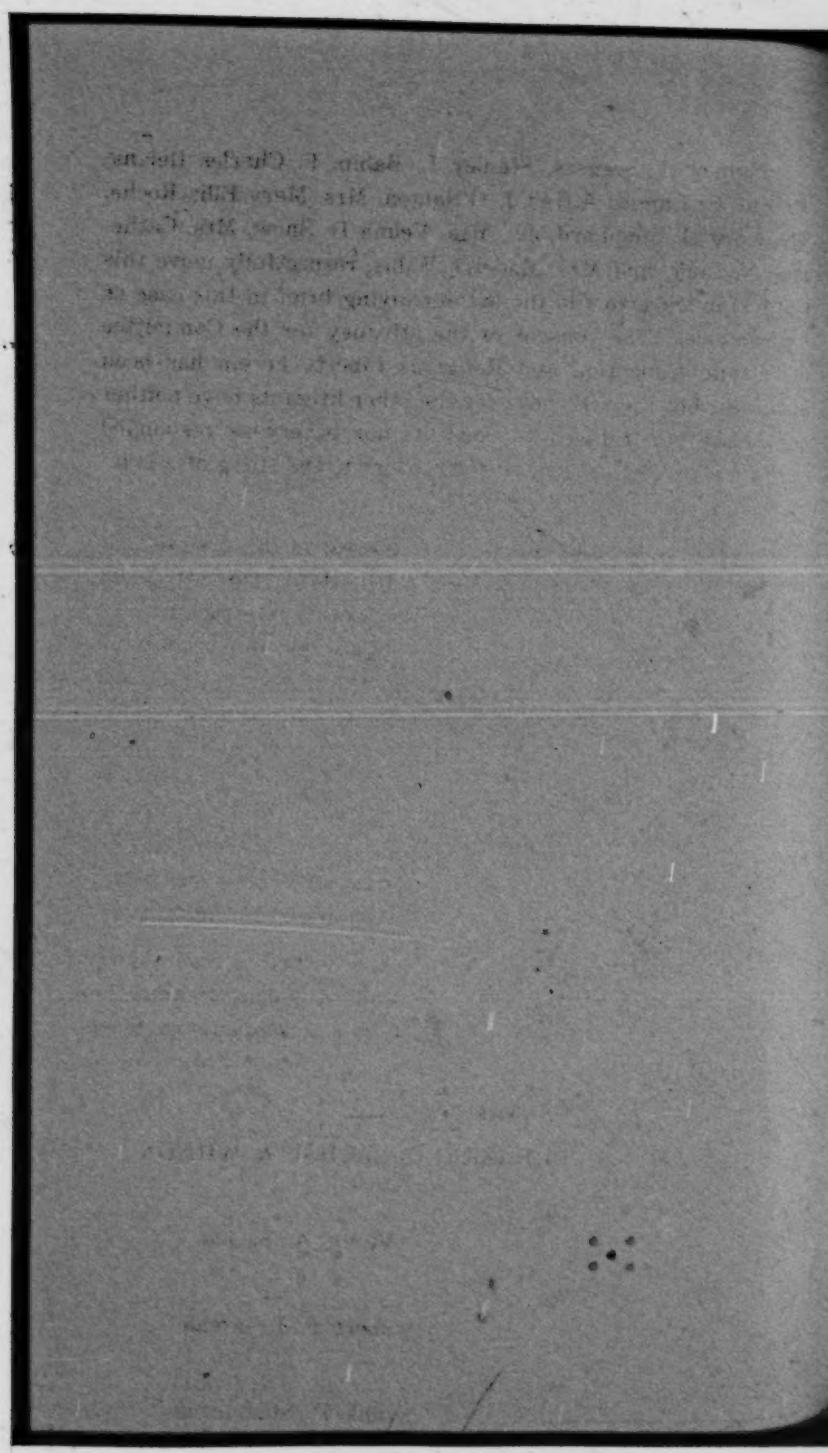

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1972

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE

Sidney A. Seegers, Stanley P. Babin, F. Charles Delana, Arthur E. Lamm, Alfred J. O'Banion, Mrs. Mary Ellis Roche, Theodore H. Shephard, Jr., Mrs. Velma D. Snow, Mrs. Catherine N. Cory, and Mrs. Madelyn Willis, respectfully move this Court for leave to file the accompanying brief in this case as *amici curiae*. The consent of the attorney for the Committee on Public Education and Religious Liberty herein has been obtained, but the attorneys for the other litigants have neither consented nor refused to consent, nor otherwise responded to the request of applicants for consent to the filing of a brief by applicants as *amici curiae*.

The applicants herein have an interest in this case in that they now have pending in the United States District Court for the Middle District of Louisiana, petitions attacking like laws enacted by the Legislature of Louisiana, to-wit, Acts 93 and 94 of the Legislature for 1972, in which the basic question involved is the same as that presented for decision in the instant case. It is believed that there are state constitutional points involved as well as federal constitutional points, and this Court has held that where the Federal Court has jurisdiction it is authorized to determine all the questions in the case, local as well as federal, and has considered state constitutional standards in the interpretation of the constitution.

While applicants' cases are not now before this Court, they may well be in the near future and it is believed that the argument made by applicants in the accompanying brief should be received.

By Attorneys:

BREAZEALE, SACHSE & WILSON

By: _____
Victor A. Sachse

By: _____
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By: _____
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January 26, 1973

Victor A. Sachse, Esq.
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Re: 72-694, Committee for Public Education v. Nyquist
72-753, Brydges v. Committee for Public Education
72-791, Nyquist v. Committee for Public Education
72-929, Cherry v. Committee for Public Education

Dear Mr. Sachse:

Consent is hereby given to your filing a brief amicus curiae in the above entitled cases.

Yours very truly,

/s/ Leo Pfeffer

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CITATIONS

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By leave of this Court, Sidney A. Seegers, Stanley P. Babin, F. Charles Delana, Arthur E. Lamm, Alfred J. O'Banion, Mrs. Mary Ellis Roche, Theodore H. Shephard, Jr., Mrs. Velma D. Snow, Mrs. Catherine N. Cory and Mrs. Madelyn Willis, file this brief as amici curiae.

INTEREST OF THE AMICI CURIAE

The amici curiae, Sidney A. Seegers, et al, have an interest in this case in that they now have pending in the United States District Court, Middle District of Louisiana, two petitions for preliminary injunctions, seeking to enjoin Joseph N. Traigle, Collector of Revenue for the State of Louisiana, from giving tax credits or otherwise implementing Act 93 of the 1972 Louisiana Legislature, and also to enjoin Louis J. Michot, Superintendent of Education for the State of Louisiana, from making any payments from public funds of the State of Louisiana to implement Act 94 of the 1972 Legislature. These cases (Sidney A. Seegers, et al vs. Joseph N. Traigle, Collector of Revenue for the State of Louisiana - Civil Action No. 72-254, and Sidney A. Seegers, et al vs. Louis J. Michot, Superintendent of Education for the State of Louisiana - Civil Action No. 72-255, United States District Court, Middle District of Louisiana), involve the same basic question as that presented for decision in the instant case, that is, whether a state can reimburse parents for a portion of the tuition to send their children to private schools directly or by granting a credit against the state income tax due by persons for a portion of the tuition paid by them to private schools.

SUMMARY OF ARGUMENT

A. REIMBURSEMENT OF TUITION

"No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion." *Everson vs. Board of Education*, 330 U.S. 1, 16, (1947).

B. The New York statute as well as the Louisiana statutes provide reimbursement to parents for tuition they pay to pri-

vate schools without a distinction between secular and religious teaching, and therefore tax raised funds are directly used for the advancement of religious activities contrary to the First Amendment to the United States Constitution.

C. Budgets for churches, synagogues and parochial schools cannot be made divisible by simply ascribing a percentage of costs to neutral functions. General services, such as transportation, secular books, free lunches and related activities may be afforded to students in all schools but may not be carved out as a special program for students who attend parochial schools only. *Walz vs. Tax Commission of New York City*, 397 U.S. 664 (1970); *Lemon vs. Kurtzman*, 403 U.S. 602 (1971).

D. Tax credits whose benefits are enjoyed almost exclusively by a sectarian class must be considered like direct monetary grants or reimbursements. As such, tax credits will tend to substantially increase the likelihood of significant political controversy regarding the dollar amount of benefit received by the parents of children in private schools. *Koysdar vs. Wolman*, Civil Action No. 72-212, United States District Court, Southern District of Ohio (December 29, 1972); *Lemon vs. Kurtzman*, 403 U.S. 602 (1971).

E. By acts of Congress the Constitutions of all States admitted to the Union since 1876 require the States to maintain a school system free from sectarian control, and the Constitutions of all but five of the States in the Union make like requirements, and state standards on constitutional questions are a proper consideration for this Court in the resolution of such questions. By such standards also the New York act is unconstitutional in all of its aspects.

ARGUMENT

The First Amendment of the United States Constitution made applicable to the states by the Fourteenth Amendment (*Cantwell v. Connecticut*, 310 U.S. 296 (1940); *Murdock v. Pennsylvania*, 319 U.S. 105 (1943)), provides in part that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ."

In *Everson v. Board of Education*, 330 U.S. 1 (1947), this Court inquired into the meaning of the "establishment of religion" clause and concluded that a law which aids or supports religious schools comes within the prohibition of this clause. In *Walz v. Tax Commission of New York City*, 397 U.S. 664 (1970) this Court extended this view:

> "A given law might not establish a state religion but nevertheless be one 'respecting' that end in the sense of being a step that could lead to such establishment and hence offend the First Amendment." 403 U.S. 602, 612.

In *Lemon v. Kurtzman*, 403 U.S. 602 (June 28, 1971), this Court struck down state statutes which would have provided salaries for teachers of secular subjects in sectarian schools, pretermitting any question of the merit of benefits of the schools involved. The Court declared:

> "* * * Under our system the choice has been made that government is to be entirely excluded from the area of religious instruction and churches excluded from the affairs of government. * * *" 403 U.S. 602, 625.

It is recognized that the men who insisted upon the first ten amendments as a condition for the adpotion of the Constitution had acquired not only by formal education but from first hand experience a basis for insight as to government unequalled by any known to us. They knew how much sectarianism had dominated the European scene in England as

well as on the continent, and how much it had to do with the coming to America of many of the colonists seeking religious freedom for themselves, and later according it to others. Examples of the latter action are Maryland's Toleration Act (1649) and the Charter of Rhode Island (1663). Other important documents leading to the First Amendment must include Samuel Adams, *The Declaration of the Rights of Men* (1772); John Adams, *Feudal and Canonical Law* (1768), the First Continental Congress' Declaration of Rights and Liberties (1774); Virginia's Declaration of Rights (1776); the Bill of Rights of Maryland (1776); the Bill of Rights of New York (1777); and the Bill of Rights of Massachusetts (1780); and also Virginia's The Act for Establishing Religious Freedom (1785).

In a short span of years many of the men who formed the Constitution and wrote the American Bill of Rights had experienced the limited monarchy which followed the peaceful revolution of 1688 in England and continued through the French and Indian War of 1756 to 1763, the growing tyranny under George III and his Lord North, the Confederacy of the Revolution, and the utter necessity for free men to establish a stable government but with restrictions on its power and to make certain that religious fervor never would be permitted to limit the freedom of the people.

As the Virginia action played so great a part in leading to the First Amendment, we quote a portion of its Act of December 16, 1785:

> "* * * that to compel a man to furnish contributions of money for the propogation of opinions which he disbelieves, is sinful and tyrannical; that even forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the partcular pastor, whose morals he would make his

pattern, and whose powers he feels are most persuasive to righteousness . . ."

With this preamble, the Assembly adopted the Act itself which reads in part:

"II. Be it enacted by the General Assembly, That no man shall be compelled to frequent or support any religious worship, place, or Ministry whatsoever; * * *" (our emphasis)

By 1876 this principle was so well established throughout the nation that thereafter each State admitted into the Union was required by Congress to provide in its Constitution the obligation to maintain a school system free from sectarian control.

North Dakota South Dakota Montana Washington	25 Stat. 677 Ch 180 Sec. 4	Feb. 22, 1889
Utah	28 Stat. 107 Chap 138 Sec. 3	July 16, 1894
Oklahoma	34 Stat. 270 Chap 3335 Sec. 3	June 16, 1906
New Mexico	36 Stat. 559 Chap 310 Sec. 2	June 20, 1910
Arizona	36 Stat. 570 Chap 310 Sec. 20	June 20, 1910
Alaska	72 Stat. 342 Public Law 85-508 Sec. 6	July 7, 1958
Hawaii	73 Stat. 4 Public Law 86-3 Sec. 5	March 8, 1959

Note: Idaho (26 Stat. 215) and Wyoming (26 Stat. 222) did not specifically refer to freedom of public schools from secular control but instead merely stipulated that their respective constitutions which included the same principle were properly drawn.

Until the decisions of this Court made applicable to the States, through the Fourteenth Amendment, the First Amendment to the United States Constitution, such issues were usually dealt with in the State courts but the State courts had no difficulty in deciding long ago that public funds could not be used to support sectarian schools directly or indirectly. We refer the Court to *Synod of Dakota v. State of South Dakota*, 14 L.R.A. 418 (1891). There plaintiff, a sectarian school, sued the defendant State to recover an amount of money allegedly due it for the tuition and instruction of a class of students under an alleged contract made with the plaintiff by the board of education. We quote some of the relevant portions of the opinion:

> "[I]t becomes necessary to determine whether or not the State can be required to pay for the services rendered by the plaintiff in view of the provisions of the State Constitution. The provisions of the Constitution of the State bearing upon the question are the last clause of section 3, art. 6, and section 16, art. 8. Section 3, art. 6, provides that 'no money or property of the State shall be given or appropriated for the benefit of any sectarian or religious society or institution;' and section 16, art. 8, provides that 'no appropriation of lands, money or other property or credits to aid any sectarian school shall ever be made by the State or any county or municipality within the State . . . * * * These provisions of the Constitution were intended to be, and are self-executing. They require no act of the Legislature to become operative, but of themselves control all legislation upon the subject of appropriating money or other property for 'the benefit of' or 'to aid' any sectarian school or institution, made after the adoption of the State Constitution, and also control and limit the powers of all state, county, or municipal officers in auditing or paying any such appropriation. * * * The question, then, is, What constitutes an appropriation for 'the benefit of' or 'aid to' a sectarian school or institution?

That such a appropriation is not limited to a gift or donation on the part of the State is clearly shown in section 3, art. 6, which provides: 'No money or property of the State shall be given or appropriated.' The State is not only prohibited from giving or donating state funds, but from appropriating them. The term 'appropriation' used in this connection with 'gift,' was evidently intended to mean something different from gift or donation. * * * It is apparent from these various provisions that the framers of our State Constitution intended to guard with zealous care the funds of the State, counties, and municipalities, collected from taxes imposed upon all the members of the community, composing the various religious sects, from being appropriated for the benefit of or to aid any one or more sectarian schools or institutions, or in fostering or building up any one or more sects within the State. The policy of prohibiting the use of funds belonging to all for the benefit of one or more religious sects has been adopted in most of the states. No one, we think, can mistake the intention of the framers of the Constitution, as expressed in these various sections of that instrument, to prohibit in every form, whether as a gift or otherwise, the appropriation of the public funds for the benefit of or to aid any sectarian school or institution. What, then, constitutes benefit or aid? Webster defines 'benefit' to mean 'whatever contributes to promote prosperity: . . . add value to property; advantage; profit.' 'To aid' is defined by the same author 'to support, either by furnishing strength or means to help success.' The demand of plaintiff is for money due for the tuition of a class of students alleged to have been instructed under a contract with the board of education. Would not the payment of this demand be for the benefit of or to aid the university? Is not the tuition received from every student for the benefit of or to aid the school, to support, to strengthen it? Do not such institutions depend mainly upon the tuition fees of students they can obtain for their support? But the learned counsel for plaintiff stren-

uously contends that the sum due plaintiff will not be contributed for the benefit of or to aid the university, but in payment for services rendered the State, or to its students, in preparing them for teaching in the public schools. This contention, while plausible, is, we think, unsound, and leads to absurd results. If the State can pay the tuition of twenty-five students, why may it not maintain at the institution all that the institution can accommodate, and thereby support the institution entirely by state funds? The theory contended for by counsel would, in effect, render nugatory the provisions of the Constitution, as the claim that the appropriation was made as compensation for services rendered could be made in all cases. This theory, carried out to its legitimate results, would enable any one leading sect to control the schools, institutions, and funds of the State, as it could claim it was rendering services for the funds appropriated. It was undoubtedly to prevent such possible results that these provisions were inserted in the Constitution. It matters not how much consideration has been given by services rendered, the language is emphatic and unqualified that no money shall be given or appropriated for the benefit of or to aid any sectarian school, society, or institution. The paying of the tuition of pupils in the Pierre University to the plaintiff in this case will, in our opinion, be for the benefit of or to aid such school or institution, and is clearly within the prohibition of the Constitution.

* * *

"The fact, therefore, that the purpose for which plaintiff was organized and exists was and is generally to maintain and promulgate the doctrines and belief of one particular sect, constitutes the university under its control a sectarian school or institution, within the meaning of section 3, art. 6, and section 16, art. 8, of our State Constitution; and the State is therefore prohibited from appropriating to it any

of the public funds collected from taxes paid by the public and contributed by members of all the different religious sects of the State."

As recently as *Seegers v. Parker*, 256 La. 1039, 241 So.2d 213 (October 19, 1970), rehearing denied November 25, 1970, the Louisiana Supreme Court, dealing with similar State constitutional provisions nullified Louisiana statutes which would have provided salaries for teachers, saying:

> "If the state is not intrusive upon and limiting of the free administration of sectarian institutions, secularity cannot be assured, and advancement of religion will ensue. And if the state acts zealously to guard the establishment principle and the legislative intent, its entanglement and involvement will most surely inhibit, deter, alter, and impinge upon religious freedom. The conflicts of state and religion which will emanate from the administration of this act are the very evil sought to be avoided by Article 1, Section 4, of our Constitution. Those who now seek Caesar's gold will one day seek redress from the payment to Caesar of that which invariably comes with his gold, his control." 256 La. 1039, 241 So.2d 213, 220.

This Court denied certiorari, *Williams v. Seegers*, 403 U.S. 955 (June 28, 1971).

Most states have never sought to require children to attend public schools only, and children in most states have freely attended sectarian schools. When the State of Oregon attempted to administer its compulsory education act otherwise, this Court readily held that the State could not interfere with parents sending their children to religious schools. *Pierce v. Society of the Sisters*, 268 U.S. 519 (1925). Nor did the Supreme Court of the State of Louisiana have difficulty in saying that the State could lend school books without charge to all children in public and private schools, sectarian and non-

sectarian. *Borden v. Louisiana State Board of Education*, 168 La. 1005, 123 So. 655 (1929), affirmed *Cochran v. Louisiana State Board of Education*, 281 U.S. 370 (1930). The rationale of the State decision, insofar as it relates to our issue was:

> "True, these children attend some school, public or private, the latter, sectarian or nonsectarian, and that the books are to be furnished them for their use, free of cost, whichever they attend. **The schools however, are not the beneficiaries of these appropriations. They obtain nothing from them, nor are they relieved of a single obligation, because of them."** (Emphasis supplied) 168 La. 1005, 123 So. 655, 660-668.

This Honorable Court reached the same conclusion long after in *Board of Education v. Allen*, 392 U.S. 236 (1968).

Meanwhile, this Court has said in *Everson v. Board of Education, supra*, that the state could pay for transportation of all school children to secular as well as public schools, but that,

> **"No tax in any amount, large or small, cen be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion."** 330 U.S. 16, 17 (Emphasis supplied)

No one can doubt that it is the obligation of the school to supply and pay for the teacher, hence the very essence of the school book law is absent here. The text book law was general in that it applied to all pupils in the state on the same basis in the form of a loan. The present tuition reimbursement and tax credit statutes are not general in nature because they specifically carve out parents of children in nonpublic schools as being eligible for certain financial advantage to be bestowed upon them by the State.

This Court in *Everson* placed great emphasis on the fact that the fare reimbursement legislation was a general program much like state maintained fire and police protection which inures to the benefit of the school children attending sectarian as well as public schools. This is a far cry from payment of salary to the teacher in the sectarian school for the teacher is selected and employed by the sectarian school. In sum, without teachers there would be no school. The public aid then goes to the very heart of the sectarian school and "government may not finance religious groups nor undertake religious instruction nor blend secular and sectarian education . . ." Zorach v. Clauson, 343 U.S. 306, 314 (1952).

Unlike *Zorach* where the Court said that "(t)he nullification of this law would have wide and profound effects," the nullification of tuition reimbursement and tax credits for parents of children in private schools would go no farther than declare that public funds may not be used to aid in partial payment of tuition to private schools, a program not once seriously considered so far as we can determine by any state legislature until the year 1967, some 176 years after the adoption of the First Amendment.

In *Tilton v. Richardson*, 403 U.S. 672 (1971), this Court upheld the constitutionality of the Higher Education Facilities Act (20 U.S.C. Sec. 201, et seq.) which authorizes grants of federal funds to institutions of higher education for construction of academic facilities, with the exception of a certain section thereof permitting the unrestricted use of the facilities so constructed after 20 years which was found unconstitutional. The result of *Tilton* must be understood in comparison with *Lemon*, *supra*, argued and decided concurrently with *Tilton*.

The Court in *Lemon* noted the difference between primary and secondary private schools and private institutions

of higher learning. The private institutions of higher learning were found to be free of religious control, the students were not apt to follow as quickly a religiously inclined teacher, and religion did not permeate the institution as in precollege schools.

> "This process of inculcating religious doctrine is, of course, enhanced by the impressionable age of the pupils, in primary schools particularly. In short, parochial schools involve substantial religious activity and purpose." 403 U.S. 602, 616.

It appears to us that a clear line of distinction was drawn by two cases of the Court: (1) *People of the State of Illinois v. Board of Education*, 333 U.S. 203 (1948), generally referred to as the McCollum case and (2) *Zorach v. Clauson*, 343 U.S. 306 (1952). In *McCollum*, involving only released time for students, the program was one wherein "religious teachers, employed by private religious groups, were permitted to come weekly into the school buildings during the regular hours set apart for secular teaching, and then and there for a period of thirty minutes substitute their religious teaching for the secular education provided under the compulsory education law." 333 U.S. 203, 205. The Court held the law to be unconstitutional and noted "the state's tax-supported public school buildings [are] used for the dissemination of religious doctrines." 333 U.S. 203, 212. Thus state support for the dissemination of religious doctrines was held to be unconstitutional.

In *Zorach v. Clauson, supra*, the Court distinguished the New York law saying:

> "This 'released time' program involves neither religious instruction in public school classrooms nor the expenditure of public funds. * * * The case is therefore unlike McCollum * * *." 343 U.S. 306, 308-309.

It is beyond any doubt that the purpose of such tuition

reimbursement and tax credit legislation is to aid religious schools and no one can doubt that religious schools exist largely to support the sect which established them.

In *Lemon v. Kurtzman, supra,* the Court noted that sectarian schools are vehicles for "inculcating religious doctrine . . . enhanced by the impressionable age of the pupils, in primary schools particularly." 403 U.S. 602, 616. The Court further said:

> "We cannot ignore the danger that a teacher under religious control and discipline poses to the separation of the religious from the purely secular aspects of pre-college education. The conflict of functions inheres in the situation." 403 U.S. 602, 617.
>
> "With the best of intentions such a teacher would find it hard to make a total separation between secular teaching and religious doctrine. What would appear to some to be essential to good citizenship might well for others border on or constitute instruction in religion. Further difficulties are inherent in the combination of religious discipline and the possibility of disagreement between teacher and religious authorities over the meaning of the statutory restrictions." 403 U.S. 602, 618-619.

It is not sufficient to say that the payment of the salaries of teachers in religious schools through the reimbursement of tuition paid by parents or through tax credit to the parents for the amount of tuition paid is not entanglement. The *Lemon* decision, particularly the concurring opinion of Mr. Justice Douglas, in which Mr. Justice Black joined, cautioned that if the State does not intrude, secularity cannot be assured and the advancement of religion will ensue and if the States does act zealously to guard, the resulting entanglement will "make a shambles of the Establishment Clause." 403 U.S. 602, 627. So also said the United States District Court in Ohio. In *Kosydar, Tax Commissioner of Ohio v. Wolman,* and *Wol-*

man v. Kosydar, Nos. 72-212 and 72-222, decided by the District Court of the United States for the Southern District of Ohio, Eastern Division, on December 29, 1972, that Court disagreed with that portion of the *Nyquist* case, *supra*, which held valid the tax credit. Among other pertinent comments, the Court said:

> "Where the state provides secular services generally, as where it provides police or fire protection to all schools including religiously affiliated ones, or bus transportation to all school students, including those attending parochial schools, the benefits flowing to organized religion are remote, minimal and incidental and not different from the benefits flowing generally to society. Not only are services of this kind religiously neutral in terms of effect, but they do not relatively advantage persons because of their religious identities. In this situation, it cannot seriously be maintained that there is a 'genuine nexus' between the state activity and the establishment of religion. *Walz v. Tax Commissioner, supra*, 397 U.S. at 675. Religion benefits from these publicly provided services only incidentally and only to the extent society has decided that it is desirable to maintain police, fire and transportation for all its constituent members. If the political process decides to amend its laws relative to the maintenance of these public facilities, by either increasing the level of services offered or decreasing them because of fiscal necessity, the political debate on these questions will almost surely not be drawn along religious lines. The bus transportation provided in *Everson*, the textbooks allowed in *Allen*, the property tax exemptions permitted in *Walz*, and the construction grants extended in *Tilton*, because they were extended to the broadest relevant class and because they were essentially secular in use terms, advanced religion only indirectly and incidentally. The dangers of religious fragmentation were, in each of those cases, minimal, and the Court had only to examine the administrative machinery of

the statutes involved to insure that the benefits would be conferred in a neutral fashion.

"Conversely, **where the affected class is predominately religious or sectarian** and the benefits provided are not inherently ideologically neutral, as where the state provides monetary grants to parents or institutioons belonging to a class that is essentially religious in character, **then, as a matter of law, the primary effect of such a statute is to advance religion, and the statute must be closely scrutinized for possible entanglement effects, primarily in terms of political entanglement. In our view, when a legislative enactment uses religion as an operative criterion or benefits one or more religious groups disproportionately to the community at large, it is highly suspect, and in all likelihood will be unable to survive such scrutiny.**

"*Walz* involved the constitutionality under the Religion Clauses of a provision of the New York State Constitution and its implementing statute which granted complete state property tax exemptions to a **broad class of private, non-profit charitable, educational** and **religious** institutions. For example, were the state to tax churches and church related institutions, those unable to pay property taxes might be forced into abrasive foreclosure proceedings. This would increase, rather than decrease, the level of entanglement attendant upon allowing churches to remain in their exempt status.

"For the state to allow a credit to the parent who foregoes the use of the provided public facility in order to send his child to a private school, is to grant that taxpayer a relative economic advantage when compared to taxpayers generally. Where the class which is allowed this credit is a rational, non-suspect one under traditional notions of equal protection, such as where aid is provided to the handicapped, the state should be afforded great latitude in the use of its taxing power. However, where the benefitted

class is suspect because of a predominately sectarian character, an additional and very strict scrutiny must be made to insure that the state has not employed its taxing powers in a manner offensive to the Religion Clauses of the First Amendment. We conclude, on the evidence before us, that the class of persons who are beneficiaries of state aid under the present act remains predominantly sectarian, within the meaning of our previous holding in *Wolman*, at 412-413." (Emphasis added)

The whole course of the type of legislation with which the Court is confronted is the acknowledged effort of religiously oriented schools to obtain directly or indirectly state funds to supplement the dwindling or otherwise insufficient funds privately provided. Tuition is the lifeblood of all private schools and it is submitted that no public money - tax money - can constitutionally be provided directly or indirectly by reimbursement of tuition or by tax credit for persons who elect to send their children to private schools.

Leave to file this brief as amici curiae is respectfully sought. Further, it is prayed that the laws of New York seeking to provide reimbursement for tuition paid to private schools and tax credit for payments of tuition be declared unconstitutional.

Respectfully submitted,

BREAZEALE, SACHSE & WILSON

Victor A. Sachse

Robert P. Breazeale

Frank P. Simoneaux

CERTIFICATE

I, Victor A. Sachse, one of the attorneys for movers herein, and a member of the Bar of the Supreme Court of the United States, certify that a copy of the foregoing Motion for Leave to File Brief Amici Curiae and a copy of the brief in support of said motion have this day been mailed, with sufficient postage prepaid to: Mr. Leo Pfeffer, Attorney at Law, 154 East 84th Street, New York, New York 10028; Honorable Louis J. Lefkowitz, Attorney General, State of New York, State Capitol, Albany, New York 12224; Mr. John Haggerty, Senate Chambers, The Capitol, Albany, New York 12224; Messrs. Davis, Polk & Wardwell, Attorneys at Law, One Chase Manhattan Plaza, New York, New York 10005.

Baton Rouge, Louisiana, February _____, 1973.

Victor A. Sachse